

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY
COMPANY as administrator for RELIANCE
INSURANCE COMPANY,

Plaintiff,

vs.

DORMITORY AUTHORITY – STATE OF
NEW YORK, TDX CONSTRUCTION CORP.
AND KOHN PEDERSEN FOX ASSOCIATES,
P.C.

Defendants.

CASE NO. 07-CV-6915 (DLC)
ECF CASE

CIVIL ACTION

DORMITORY AUTHORITY OF THE STATE
OF NEW YORK AND TDX
CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

**AFFIRMATION OF TRACEY K. WISHERT
IN SUPPORT OF HARLEYSVILLE'S
MOTION FOR SUMMARY JUDGMENT**

TRATAROS CONSTRUCTION, INC. and
TRAVELERS CASUALTY AND SURETY
COMPANY,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE
COMPANY; BARTEC INDUSTRIES, INC.;
DAYTON SUPERIOR SPECIALTY
CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC;
KEMPER CASUALTY INSURANCE
COMPANY d/b/a KEMPER INSURANCE
COMPANY; GREAT AMERICAN

INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.; UNITED STATES FIRE INSURANCE COMPANY (U.S.) INC. f/k/a COMMERCIAL UNDERWRITERS INSURANCE COMPANY; ZURICH AMERICAN INSURANCE COMPANY d/b/a ZURICH INSURANCE COMPANY; OHIO CASUALTY INSURANCE COMPANY d/b/a OHIO CASUALTY GROUP; HARLEYSVILLE MUTUAL INSURANCE COMPANY (a/k/a HARLEYSVILLE INSURANCE COMPANY); JOHN DOES 1-20 AND XYZ CORPS. 1-20,

Fourth-Party Defendants.

I, Tracey K. Wishert, an attorney duly licensed to practice law in the State of New York and the United States District Court, Southern District of New York, hereby affirms the following under penalties of perjury:

1. I am an associate with the law firm of Riker, Danzig, Scherer, Hyland & Perretti LLP, counsel to fourth party defendant Harleysville Insurance Company of New Jersey ("Harleysville"), and am fully familiar with the facts stated herein based upon a review of the file maintained by this office.

2. I submit this Affirmation in support of Harleysville's motion for summary judgment dismissing the complaint of fourth party plaintiffs, Trataros Construction, Inc. ("Trataros") and Travelers Casualty and Surety Company, as subrogee and assignee of Trataros, ("Travelers") on the grounds that Trataros breached the notice provision contained in the Harleysville policy.

3. Attached hereto as **Exhibit A** is a true and correct copy of this Court's June 25, 2008 opinion and order.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Amended Fourth-Party Complaint filed by Trataros on April 8, 2008.

5. Attached hereto as **Exhibit C** is a true and correct copy of a letter from TDX Construction Corporation ("TDX") to Trataros, dated March 7, 2003, which enclosed a report from Testwell Laboratories.

6. Attached hereto as **Exhibit D** is a true and correct copy of a letter from TDX to the Dormitory Authority State of New York ("DASNY"), dated June 17, 2003.

7. Attached hereto as **Exhibit E** is a true and correct copy of a letter from TDX to Trataros, dated August 28, 2003.

8. Attached hereto as **Exhibit F** is a true and correct copy of the original Complaint filed by Travelers against DASNY, under Civil Action No. 04 cv 5101 (the "Original Action"), dated June 28, 2004.

9. Attached hereto as **Exhibit G** is a true and correct copy of the Third Party Complaint filed by DASNY in the Original Action, dated August 4, 2004.

10. Attached hereto as **Exhibit H** is a true and correct copy of Trataros' and Travelers' Acknowledgment of Service of the Third Party Complaint in the Original Action, filed October 7, 2004.

11. Attached hereto as **Exhibit I** is a true and correct copy of the Amended Fourth Party Complaint filed by Trataros and Travelers in the Original Action on February 17, 2005.

12. Attached hereto as **Exhibit J** is a true and correct copy of the Affidavit of Service on Harleysville for the Original Action, dated March 2, 2005.

13. Attached hereto as **Exhibit K** is a true and correct copy of relevant pages from the Harleystown Policy issued to Bartec Industries, Inc.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

New York, New York
August 8, 2008

/s/ Tracey K. Wishert

Tracey K. Wishert